

POSTSCRIPT to the



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To the PUBLICK.

IN the English constitution there will and must be varying and uncertain practice, not owing to the uncertainty of the principles upon which it is founded or the rules established for the administration of Government and the execution of Law, but to the very nature of the constitution which must occasion a continual struggle between the three checks which constitute the Legislative power which also must have its influence upon the Executive. I will give at present one or two instances only.

It is obvious to a common understanding that until men are formed into Societies and a state of Government, they have a right to repel force; each individual having no Court to which he can apply for redress must be his own judge, and, indeed, has a right to defend himself against an attempted injury and to punish any injury done to him. When men enter into Society this right is suspended and the Publick undertakes to inquire into all injuries or wrongs, and to redress them. When the Publick faithfully performs its part, one great end for which Societies are formed is answered. When this is neglected, or the violence of party prevents those entrusted by the Publick from their duty, the members of such Society may be in a worse condition than if they had remained in a state of nature: Some would say that the natural right of each individual revived, and that he would be justified by the laws of God in taking his own revenge: For my part, I had rather quit such a Society; and, if I could not find a better I should prefer solitude and the life of a Hermit.

The institution of Juries, grand and petty, is a wise provision in the English government, and they are designed to inquire into and punish all injuries which tend to disturb the peace of government; and not merely injuries to the persons and characters of men in authority, but all breaches of peace, defamations, calumnies and slanders of private persons. The most perfect institution is liable to be abused, and *corruptio optimi est pessima*.

In the reigns of the Stuarts we know Juries were packed, sometimes to serve the unwarrantable purposes of the Court, and sometimes the like unwarrantable purposes of the Opposition. What terrible distress was this the cause of? Many innocent persons were punished and many guilty escaped.

I will say nothing at present of any late proceedings of Juries in England nor in any of the Plantations, but will inquire by what means the equitable design of this institution is frustrated or prevented, and I think it appears both here and in England to be generally done from the spirit and by the influence of party. As to Grand Juries in England, the manner of their appointment I believe is generally fair and equitable, a great number of the principal Commoners being returned by the Sheriff, and the Inquest selected from them; but when parties run high, one side or the other prevails according to the state of the County and the disposition of the principal Commoners for or against the Court and Country, or for or against any particular measures of one or the other. I have ever been a Whig and I abhor the Court measures in the latter end of the reign of King Charles the Second. I never read the history however without being convinced that the Whig as well as Tory Grand Juries found or rejected bills just as they stood affected and Parties prevailed. The case in England as to Grand Juries can never be much better than it is, and the abuse from the manner of appointment is small compared with the neglect or abuse in this province. The latter is capable of amendment. The particular qualification

of a Grand Juror not being defined in the Province Law, the Common Law is our Rule, which requires good and lawful men, freeholders, and I wish at the Assizes, Justices of the Peace and men of the first Rank were required by law to serve, Instead of being returned by the Sheriff, the Province Law provides that they shall be chosen by the Towns in such numbers as the precept issued from the Court directs. If the choice was properly attended to, there seems less danger of partiality or corruption than when return is made by the Sheriff, but this provision is in general greatly abused. In the Country Towns interest is sometimes made by such persons who think themselves, or are thought by others, fit to serve a particular purpose. In one Town in the Province where half a dozen or more Grand Jurors are returned, it has been the practice for a certain junto at one of their club-meetings just before a Superiour Court to agree upon a Set of Grand Jurors, such as are of their own party, and at what is called a Town Meeting, when it may be there are not twenty persons present, the Town-Clerk and three or four more nominates the men agreed upon and no opposition is made. To this must be attributed the Ignoramuses which have been returned upon Bills for Offences notorious to every body else besides the Grand Juries, and also the Bills which have been found against Persons who when they have been brought upon trial have been discharged by Noli prosequi or for want of evidence to support the indictment: Nay when party spirit has run high innocent men have been apprehended and laid in Goal after Bills found for capital offences utterly incredible; and when the supposed Offenders have been brought upon trial not the least evidence has appeared against them. Are not Grand Jurors under a very solemn oath which points out their duty? They are, and unless I am misinformed, some of them have had sleepless nights whilst their business lay before them, and resolved in the morning to lay aside all regard to party, but care has been taken to beset them, and, to judge the most favourably, to persuade them that their doubts were ill founded, or if there was some room for doubt, the general voice of the people which was the voice of God ought to determine them. Is this making a right use of our liberties? No, my Countrymen, either attend your Meetings, and except to a partial return of men all of one side or endeavour for a law, that the names of a proper number of men of virtue, understanding, and property in every town may be put into a box and taken out by lot or chance and return made as in the case of Petty Jurors. I had rather have a Grand Jury returned by a Sheriff under oath than by a few men under no tie or restraint, except attachment to a party. Until some reform is made of this scandalous abuse of our privileges neither our properties, characters, liberties or lives are safe.

I will now take notice of a rule or principle of law not in itself uncertain, but sometimes departed from to serve the purpose of party, and this respects Petty Juries or what our people generally call Juries for Trials. I know of no more settled rule of Law than this, viz That the Court are Judges of Law and the Jury of Fact. It is a rule in general conformed to. Jurors at all times, except in party affairs and now and then where there is a concealed opinionative Jury, think themselves happy that there is such a rule: It eases their minds from a great burden which must otherwise lay upon them. Ordinarily parties desire to have this for their Rule. I cannot believe there ever was a Lawyer of any reputation who ever wished to see this Rule abolished. In some instances they strive to depart from it when a Jury would be more likely than the Court to be subservient to Party or sinister views or prejudices.

I know that when a Jury will pertinaciously determine matters of law directly against the opinion of the Court, some

Censor

S A T U R D A Y, M A R C H 14. 1772.

VEXAT CENSURA COLUMBAS.

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☞ THE Supplement attending last Saturday's CENSOR, signed T. M. containing several charges of knavery against one M-----x, which the honest and very generous Mr. *William Molineux* hath been pleased to say was designed as reflections on his character, and on that supposition has applied to the Printer, attended with several persons, (one of whom was a Gentleman he respects) and with an authoritativeness peculiar to himself, demanded to know from him the Author, but finding the Printer not intimidated, and his threats treated with contempt, he promised to call on him again with other force—this he hath not done.—The Printer begs leave to say, the Paper referred to came to him properly authenticated; he thought himself obliged on the principle of humanity to publish the complaints of an honest poor man, who appeared to have been much abused and d-fr--ded, and had no other way left to obtain redress. Yet he is willing to have it known that his Press is open to Mr. *Molineux*, who is welcome to publish any thing that may tend to remove the injurious reflections which he says have been cast on him: This offer the Printer has already made him.

WE cannot but here observe, that those who have heretofore contended for an unlimited freedom of the Press, and observed no bounds in abusing the most amiable and deserving characters, whose sentiments are opposite to theirs; when the scene is reversed, and they fancy themselves aimed at, are heard the loudest in the cry against the scandalous abuse of the Press, as they term, and are for stigmatizing with infamy the Printer who dares to expose their villainy. The chagrin of the *Bostonian* who assumes the name of *Paoli* is not to be wondered at, as it is ever the effect of detected baseness, and conscious guilt.

Continuation of Extracts from the INDEPENDENT WHIG, begun in our last.

MONSIEUR *Patin*, an eminent and witty Physician at *Paris*, who had long seen the falsities and calumnies spread by the Writers of news and politicks, gives them a character suitable to his indignation; *Genus hominum audacissimum, mendacissimum, avidissimum ut rem facient*, "A most shameless, a most lying tribe; most abandoned in pursuit of the penny." They indeed rarely consider what is right or wrong, but what will take. Is any good man unpopular, or to be made so? They cry him down; and then let him be ever so able, ever so virtuous, he is guilty and foolish. Is a worthless man popular, or is it worth while to make him so? They cry him up; and he has at once all merit, and every fine quality. The same pens which libelled a *Tennison* deified a *Sacheverell*.

Is the popular humour for war? Or does a cry for war answer any end of sedition or gain? Does it hurt a man or a party they hate? Or does it gratify the men and party they espouse? Or does it quicken the sale of a libel? They are presently loud for war, be it ever so unseasonable, ever so ruinous, and inveigh against all pacifick men and counsels. Is the sound of peace in fashion, or serves any of the narrow and passionate purposes abovementioned? They are vehement advocates for peace, let it be ever so premature, and the terms ever so scandalous: They then villify all the managers and all the advantages of the war, and extol all who would make a ruinous peace. Is the peace solid and honourable, and they displeased and disappointed? It must be shewn in hideous colours, and the people taught to hate it, and all that had any hand in it.

For, as all their strength and hope lie in the credulity and mutability of the people, they always appeal to them, because they are always sure to deceive them. They have two short maxims: Whatever those whom they dislike attempt, is bad; though it were to save the nation: Whatever promotes their party or their paper, though it threatens national destruction.

THIS is another shameless practice of such unfair and passionate Writers, to represent all places as odious and even criminal, whilst they themselves are thirsting after them, and only rail at them because they cannot get them. This is always a proper answer to such malignant railers, and ought to be a constant antidote against their malignity: Nor can there be a greater disgrace to their readers, than to be at all influenced by such ridiculous prejudice and railing. Without the establishment of employments, of places and distinction, no human society can be established, no more than without magistracy and laws. Both these imply places as well as priority: And none but a mere mob, nor even a mob without intoxication, can dream of subsisting without the degrees of higher and lower, without places and inequality, and without government, or dream of preserving government without governors, without men in place and office: For the chief governor does but hold the chief place. Where there are laws, they must be executed; where there is authority, it must be administered

nistered ; nor can either be done without hands, without ministers and officers, nor are these to be had without support, without places and recompences.

ALL this is so plain, that it is a'most a shame to prove it ; but it is a greater shame to those who make it necessary, and no small one to such as want such proof.

Human passions are too powerful for the human understanding : Where disgusts are strong, reason is weak. When we are brought to dislike the persons of men we dislike their good fortune. When we come to envy their fortune, we dislike their persons ; and whatever they have, whatever they do, we are apt to hate, when we hate them. In this unhappy turn and imbecility in human nature, lies the great encouragement and strength of Libellers. They perceive how easy a thing it is to make men think ill of one another ; how natural it is to wish ill where we think ill, and to fall into the strongest prejudices for the silliest reasons.

We ought to be more upon our guard against hasty censure and unreasonable piques, as we are prone to them. We ought to judge of men and their conduct with the more caution, because we are apt to do it with prejudice. This is the voice of humanity ; this is but christian charity. We should read all Writers with caution, but cannot arm ourselves with too much when we read Party-Writers, or too scrupulously consider their drift and motives.

Every Reader of those warm orators, should ask himself, whether they do not speak *from* the passions as well as *to* the passions ; whether men in a flame can reason candidly, or see clearly ; whether an angry man can represent fairly ; whether what gives most offence would give any, if it came from a different quarter and different men : Whether publick complaints be not often breathed from griefs which the Publick does not feel, and might not be removed by a remedy which would not make the Publick easier : Whether one who gets a penny, by censuring the Ministry, or hopes for a place by a change of Ministers, knows state affairs better, or will conduct them better, than they, or would lose a penny by praising them, though they ever so manifestly deserved his praise : Whether one who collects news knows more of the condition of Christendom, than the Secretary of State ; whether either the dealer in news or in politicks, would hurt his paper by generous truth and observation, or would not rather promote it by misrepresentations, and by ill-natured and random censure ?

Whoever is the Author of slander and invective, usurps the place of justice, awards judgment, and inflicts personal punishment ; a most unnatural Judge, governed by his own evidence, decreeing in wrath, and condemning without hearing ! *Cicero* observing and censuring the scandalous, personal invectives allowed at Athens, even upon the stage, says, " It was perhaps excusable thus to law popular incendiaries, and the sons of sedition ; * though it had been still better to have left them to judgment of the tribunal, than that of a satyrist. But to suffer such

invectives

* *Populares homines, improbos, in Repub. seditiosos.*

" invectives against men in authority, was unpardonable." He mentions *Pericles*, who held the chief. The same great author says, that to villify and depreciate such as were intrusted with the administration of the Roman state, was an attack upon the state itself, and consequently liable to the same construction and punishment. *

These scandalous scurrilities upon the persons of men, intolerable in any state, could not be always borne even in that of Athens. Even the Athenians, fond of licentiousness, beyond any civilized nation, were forced to restrain it by law. *Horace*, no enemy to just satire, observes, that its excesses upon the stage were so violent, as to require such restraint, as the natural effect and cure of liberty abused. † If the law, then and therefore made by the Areopagus, cramped the spirit of the comic and other Writers, whom had they to thank but themselves ?

It was high time to have recourse to such a check, when *Alcibiades*, for want of a redress from law, for an attack upon his character in the poems of *Eupolis*, redressed himself by drowning the Poet : Terrible vengeance, as unjustifiable as what provoked it, but not surprising from a man of his great spirit, great quality, and publick dignity, exposed to publick scorn in a wanton lampoon ! Both acted arbitrarily : *Eupolis* setting himself up for a Judge and a doer of justice, assaulted the reputation of *Alcibiades* : Just so reasoned *Alcibiades*, ‡ and took away the life of *Eupolis*.

Thus ended the invective strains of the Greek Poets ; and ended in disgrace, as they had been exerted without mercy or bounds. § As their licentiousness had been extreme and shocking, the law was awful, and its penalties dreadful : By it the offenders were to be cudgelled ; nay, cudgelled to death. ||

Machiavel's distinction between publick calumny and publick accusation, will always be just. Accusation infers facts and proofs, and proceeds by them. Calumny supposes every thing, and proves nothing : The less it demonstrates, the more it can invent, and charge the highest guilt upon the greatest innocence. It is generally addressed to the vulgar, and conceived in vulgar strains, such as none but the vulgar can approve or answer.

As the poor are apt to envy the rich, men of ambition to emulate men in power, the unfortunate such as flourish, it is natural for mean souls to bear spite to such as do not resemble them, and for bad characters to traduce good. This trade they easily monopolize. Such as they rival cannot rival them, and therefore they are unanswerable. Language like their own, which is the only proper language for them, is what no Gentleman can return them. No well-bred man is a match for a scold, nor will envy him the credit of excelling him in his profession.

* *Majestatem minuere, est de dignitate, aut amplitudine, aut potestate populi, aut eorum quibus populus potestatem dedit, aliquid derogare. Cic. de Invent. L. 2.*

† ——— In vulum libertas excidit, et vim

Dignam lege regi ———

Hor. de Art. Poet.

‡ ——— Doluere cruento

Dente lacessiti.

Hor. Epist. ad August.

§ *Turpiter obicit, sublato jure nocendi.*

Hor. de Art. Poet.

|| ——— Formidine fatis

Ad bene dicendum redacti.

Hor. Epist. ad August.